IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

WP(C).No. 32074 of 2007(R)

PETITIONER:

1. **SUSHAMESWAR DAS, VIJAYA MANDIRAM, KOTTAKKAKAM, MUKKALI, ARYANAD P.O., NOW RESIDING AT AJANAM, VALIYAKULAM, ARYANAD P.O.**

2. **SMT. ANITHAKUMARI, W/O SUSHAMESWAR DAS, VIJAYA MANDIRAM, KOTTAKKAKAM, MUKKALI, ARYANAD P.O., NOW RESIDING AT AJANAM, VALIYAKULAM, ARYANAD P.O.**

BY ADV. SRI.S.KRISHNAMOORTHY

RESPONDENTS:

1. **THE DISTRICT COLLECTOR, COLLECTORATE, THIRUVANANTHAPURAM-695535.**

2. **THE VILLAGE OFFICER, VILLAGE OFFICE, ARYANAD P.O., THIRUVANANTHAPURAM-695545.**

3. **STATE BANK OF INDIA, REP. BY ITS CHIEF MANAGER, ZONAL OFFICE, THIRUVANANTHAPURAM - 695547.**

4. **STATE BANK OF INDIA, REP. BY ITS MANAGER, AUTHORIZED OFFICER, VALIYMALA BRANCH, NEDUMANGADU P.O., THIRUVANANTHAPURAM-695547.**

BY SR. GOVT. PLEADER, SMT.M.K. PUSHPALATHA, R1 & R2
ADV. SRI. CHANDRAN PILLAI, SC FOR SBI (R3 & R4)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 32074 OF 2007 R
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Dated this the 31st October, 2007

J U D G M E N T

The challenge in this writ petition is against Ext. P1 and other proceedings initiated against the petitioner under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. Exts. P1 and P2 are the possession notices that were issued and Ext. P5 is the notice issued by the Village Officer prior to taking actual possession of the property. The contention of the petitioners is that there has not been a default warranting initiation of the proceedings under the said Act. It is also submitted that though the petitioner is a guarantor, who has also mortgaged an item of property, the principal debtor, who is none other than the husband of the petitioner, has also mortgaged another item of property. It is her submission that the Bank has not

taken any action against the principal debtor's property while actual possession of the petitioner's mortgaged property has been taken over.

2. Counsel for the Bank, on instruction, submits that in 2004 an overdraft facility for a total sum of Rs.20 lakhs was availed of for the benefits of three concerns mortgaging two items of property, one belonging to the principal debtor and the other belonging to the guarantor, the petitioner herein. According to the Bank, default has been committed since 2004 itself, and as it continued Section 13(2) notice was served on the defaulters on 2-6-2006 to which no objection was raised by either of them. Thereafter also, the position continued as before and finally, Exts. P1 and P2 were issued and symbolic possession was taken over in December, 2006. Even thereafter, the Bank had given them sufficient time to discharge the liability and notices were also given which were not responded to by the petitioners. Finally, they approached the District Collector and obtained an order under Section 14 of the Act and the Village Officer was

authorised to render assistance to the revenue officers and the police were directed to render necessary assistance for taking actual possession of the property. It is stated that in pursuance to the said order, on 27-10-2007 actual possession was taken over and a mahazar has been prepared with copy to the petitioners. It is also pointed out that thereafter the petitioners broke open the lock put by the Bank and a complaint in this behalf has been made to the police on which action has been taken.

3. Evidently, default has been committed and there does not seem to be any dispute on that aspect. If that be so, the Bank cannot be faulted for having declared the account as an NPA in which event the Bank is justified in taking action against the property. At the stage of Section 13(2) notice was served on the petitioners. Counsel for the Bank made available in Court actual proof of service of notice. In any case the petitioners who did not even make a complaint that the notice was not served, even on receipt of Ext. P1, are not justified in raising this complaint at this

distance of time. This is now raised only to get over the argument of the Bank that the petitioners should have pursued the appellate remedy before the Tribunal.

4. Petitioners now submit that certain payments were made to the Bank sometime in 2006. While the Bank admits that payments were in fact made, the argument is well founded that once the asset is declared as NPA subsequent payments made as claimed by the petitioners does not make in any manner fetter the right of the bank in proceeding with the action. On the whole I am satisfied that no illegality has been committed by the Bank.

5. Even now, the Bank makes an offer that if the petitioners makes a substantial payment, the Bank is willing to return the property to the petitioners. To this the petitioners submit that if a breathing time is granted they will be able to remit the dues. Therefore, as suggested by counsel for the Bank and not objected by the counsel for the petitioners, i direct that if a payment of 50% of the dues is made by the petitioners within three weeks from today, the Bank

will return the property to the petitioners. The balance amount will be paid by the petitioners in two equal monthly instalments, and the first instalment will be payable on the 1st of January, 2008 and the second on the 1st of February, 2008. Needless to say that if any default is committed in the remittance as ordered above, the Bank will be entitled to sell the property without further notice even by resuming possession of the same.

Writ petition is disposed of as above.

ANTONY DOMINIC
JUDGE

jan/-